

1 HONORABLE RONALD B. LEIGHTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

QUINAULT INDIAN NATION

Plaintiff,

v.

HON. DIRK KEMPTHORNE, in his official capacity as Secretary, United States Interior; HON CARL ALTMAN, in his official capacity as Assistant Secretary, Indian Affairs, United States Department of Interior, and STANLEY M. SPEAKS, in his official capacity as Regional Director of Indian Affairs, United States Department of Interior Defendant.

Case No. C09-5064 RBL

ORDER GRANTING TEMPORARY  
RESTRANING ORDER

THIS MATTER is before the Court on Plaintiff's motion for Temporary Restraining Order [Dkt. #9] and Plaintiff's motion for Emergency Temporary Restraining Order [Dkt. #13]. For the reasons set forth below, the motions are GRANTED.

**I. Introduction**

This action centers around the attempted sale of 26 parcels of Indian-owned trust land within the Quinault Indian Reservation. This action is intricately related to a companion case, *Anderson & Middleton*

1 *v. Salazar et al.*, Cause No. CV09-5033RBL<sup>1</sup>. Plaintiff bid for the land, submitted a deposit, and  
2 subsequently failed to pay the remaining balance due. Plaintiff argues that it is justified in not yet tendering  
3 full payment for the 26 parcels and asks the Court to enjoin both the forfeiture of its deposit and the  
4 pending sale of the parcels to the next highest bidder<sup>2</sup>. Defendants argue that a temporary restraining order  
5 is improper and that the United States Department of the Interior of Board of Indian Appeals' (IBIA)  
6 decision should continue to bind the Quinault Nation (Quinault) in this matter.

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8 In July of 2006, tribal member Ms. Helen Sanders applied to the Board of Indian Affairs (BIA) to  
9 sell her trust land as is required by 25 U.S.C. §483 [Dkt. #14]. The BIA organized a public auction for the  
10 land in June, 2007, by giving notice in the local newspaper [Dkt. #15]. This public notice invited bidders  
11 to bid on the 26 parcels in question. It did not mention Quinault or its statutory right to match the highest  
12 bid<sup>3</sup>. *Id.* Bidding for the land occurred in July, 2007. On July 7, 2007, Quinault bid \$4.8 million for all 26  
13 parcels [Dkt. #9-2]. The bids were publicly announced on July 14, 2007. *Id.* Along with Quinault, the  
14 other relevant bidder was Anderson & Middleton Company (A&M) whose bid only pertained to 20  
15 parcels. *Id.* The total amount of A&M's bid was \$4,391,026.00. A&M bid for four parcels separately.  
16 However, its bid for the remaining 16 parcels was in lump-sum form. The BIA therefore requested that  
17 A&M break down its bid for the remaining 16 parcels to determine who was the high bidder for each  
18 parcel. [Dkt. #4-3] (Board Decision, 4). At this point, both A&M and Quinault tendered 10% deposits, as  
19 required by the BIA<sup>4</sup>. In a letter dated July 23, 2007, the BIA determined that (1) Quinault was the highest  
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23 <sup>1</sup>The Anderson & Middleton case is currently stayed. Defendants have moved to Consolidate [*see* Dkt. #8 in this action;  
24 Dkt. #10 in CV 09-5033] the cases, and there has been no opposition from the Plaintiff in either case. The Motion to Consolidate  
25 has therefore been granted.

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27 <sup>2</sup>Plaintiff claims that the BIA's bidding process was flawed and arbitrary, and that Quinault should have been able to  
28 purchase the land at market value without participating in the bidding process, and that the advertisement for the sale of the 26  
parcels was materially misleading [Dkt. #1, 5].

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30 <sup>3</sup>As amended in 2004, 25 U.S.C. § 2216(f) provides the Quinault with the right to match any offer removing the trust  
status or other restrictions on alienation from Indian-owned land.

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32 <sup>4</sup>The Quinault's deposit was \$480,000.00 and A&M's deposit was \$439,102.60 [Dkt. #13-5].

1 bidder for the six parcels not bid upon by A&M, and (2) A&M was the highest bidder on the 20 parcels for  
2 which they had submitted a bid<sup>5</sup> [Dkt. #4-3] (Board Decision, 7). The BIA then went back to Quinault, as  
3 required by 25 U.S.C. § 2216(f), and offered it the opportunity to match A&M's bid for the remaining 20  
4 parcels. *Id.* Quinault reluctantly matched A&M's bid, while protesting the bidding process and the method  
5 used for evaluating the highest bid. *See Quinault's Letter of Protest, Exhibit M.* After matching A&M's  
6 bid, the total amount owed by Quinault for the 26 parcels was \$5,476,415.00<sup>6</sup>. *Id.*

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8 Both A&M and Quinault appealed to the IBIA<sup>7</sup> [Dkt. #4-3]. Quinault argued that the process for  
9 evaluating the bids was flawed and that the final price that the BIA required from Quinault to purchase the  
10 26 parcels was too high. *Id.* Quinault also argued, as it does here, that it should have had the opportunity  
11 to purchase the parcels for "fair market value" without entering into the formal bidding process. *Id.* A&M  
12 argued that Quinault was improperly given the opportunity to match its bid and that it should be allowed to  
13 purchase the 20 parcels for its initial bid price. *Id.* On December 30, 2008 the IBIA issued a decision on  
14 the consolidated appeals, rejecting the arguments made by Quinault and A&M, and affirming the BIA's  
15 decision to award the sale of the parcels to Quinault for \$5,476,415.00 [Dkt. #4-3].  
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18 After the appeal concluded, the IBIA sent Quinault a letter confirming the agreement and reminding  
19 it of its obligation to pay the remaining \$4,996,415.00 by February 17, 2009<sup>8</sup> [Quinault Action, Dkt. #9-3].  
20 The letter gave Quinault 30 days to tender full payment for all 26 parcels. The letter also stated that if the  
21 full amount was not received within the given time period, then Quinault's 10% deposit would be forfeited.  
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24 <sup>5</sup>By comparing the amounts bid by both A&M and Quinault, the BIA determined that Quinault's bid for the 16 parcels  
25 (for which A&M submitted only a lump-sum bid) could not exceed A&M's lump-sum bid for these same parcels regardless of  
how the bids were itemized out after the fact.

26 <sup>6</sup>This amount represents the match price for A&M's bid amount for the 20 parcels, \$4,391,026.00, plus the  
\$1,085,389.00 bid by the Quinault for the remaining six parcels [Dkt. #9-3,9-4].

27 <sup>7</sup>The Quinault appeal and the A&M appeal were consolidated before the IBIA.

28 <sup>8</sup>This is the difference between the final bid price of \$5,476,415.00 and the deposit already paid by the Quinault of  
\$480,000.00.

1 *Id.* On January 21, 2009, A&M filed suit in this Court challenging the December 30, 2008 IBIA decision<sup>9</sup>.  
2 Similarly, on February 4, 2009, Quinault filed suit in this Court also challenging the IBIA decision [Dkt.  
3 #1]. The deadline for full payment by Quinault passed at the end-of-business on February 17, 2009, after  
4 both suits were filed. Quinault filed a motion for a temporary restraining order on February 18, 2009 [Dkt.  
5 #9]. Quinault has not tendered any additional sums to the BIA in furtherance of purchasing either the 20  
6 contested parcels or the six parcels for which it was the only bidder. Without an injunction, Quinault now  
7 faces the possibility of losing both its deposit and its right to purchase all 26 parcels. Similarly, A&M  
8 seeks an injunction to prevent the parcels from being transferred to Quinault in the event that Quinault, is  
9 able to tender the remaining \$4,996,415.00.  
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12 **II. Discussion**

13 A plaintiff seeking preliminary injunction “must establish that he is likely to succeed on the merits,  
14 that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities  
15 tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense  
16 Council, Inc.*, \_\_U.S.\_\_, 129 S.Ct. 365, 374 (Slip Opinion) (Nov. 12, 2008). (Citations Omitted). “A  
17 preliminary injunction is an extraordinary remedy never awarded as of right.” *Id.* at 376. The standard for  
18 granting a preliminary injunction balances a plaintiff’s likelihood of success on the merits against the  
19 hardship to the parties. The greater the relative hardship to the moving party, the less probability of  
20 success on the merits must be shown. *Clear Channel Outdoor Inc. v. City of Los Angeles*, 340 F.3d 810,  
21 813 (9th Cir. 2003). “These two formulations represent two points on a sliding scale in which the required  
22 degree of irreparable harm increases as the probability of success decreases.” *Arcamuzi v. Continental*  
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26 <sup>9</sup>A&M previously filed Cause No. C07-05419, attempting to prevent the sale of the 20 parcels of land to Quinault. That  
27 action was dismissed, because A&M had failed to exhaust its administrative remedies before commencing an action in this Court,  
28 pursuant to 5 U.S.C. § 704. Having now exhausted its administrative remedies, A&M filed another action under Cause No. C09-  
05033, requesting that the Court enjoin the Defendants from granting the Quinault the right to match A&M’s high bid for the  
20 contested parcels, and requesting that the Court enjoin transfer of the parcels to Quinault. *Anderson & Middleton Co. v.  
Salazar et al.*, 3:09-cv-05033RBL [Dkt. #s1, 5].

1 *Airlines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987) (Citations Omitted). However, all four factors are  
2 considered together in evaluating if a preliminary injunction is appropriate. The standard for issuing a  
3 temporary restraining order is the same as the standard for issuing a preliminary injunction. *Cal. Indep.*  
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5 *Sys. Operator Corp. v. Reliant Energy Servs. Inc.*, 181 F.Supp.2d 1111, 1126 (E.D.Cal. 2001).

6 There is a tenable argument that Plaintiff will succeed at overturning at least one of the IBIA's  
7 conclusions if given the chance to argue the merits. Plaintiff unsuccessfully argued to the IBIA that  
8 because an advertisement was placed in the local newspaper without notice of Quinault's statutory right to  
9 match the highest bid, the price of the 26 parcels was improperly driven up by public bid<sup>10</sup> [Dkt. #4-3]. Put  
10 another way, Plaintiff argues that but for the improper advertisement, the price required to purchase the 26  
11 parcels would have been significantly lower. *Id.*

13 Standing on its own, Plaintiff's material misinformation argument does not itself satisfy the standard  
14 required for issuing a temporary restraining order. However, A&M also claimed that it had no knowledge  
15 of Quinault's right to match when submitting its bid. *Id.* Indeed, A&M claimed in its appeal to the IBIA  
16 that it would not have submitted a bid at all, if it had known of Quinault's right to match. *Id.* Because  
17 Quinault was required to increase its bid from \$4,800,000.00 to \$5,476,415.00 to match A&M's bid, and  
18 because A&M would not have submitted a bid but for the omission in the advertisement, there is at least  
19 some chance of success on the merits of Quinault's faulty process challenge to the BIA decision. While  
20 Plaintiff's likelihood of success on the merits may not be a compelling factor by itself, the three other  
21 required factors compel the Court to grant the temporary restraining order.

24 Plaintiff has adequately demonstrated that if a temporary restraining order is not issued, then it will  
25 suffer significant and immediate irreparable harm. The deadline for Quinault to avoid forfeiture of its  
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28 <sup>10</sup>Plaintiff also argues that the BIA's erroneous statement that the land was zoned for recreation and home site purposes  
contributed to the land's improperly inflated price [Dkt. 4-3].

1 deposit on the parcels passed on February 17, 2009<sup>11</sup>. Plainly stated, if the Court does not intervene, then  
2 Quinault's entire \$480,000.00 deposit will be forfeited [Dkt. #4-4].

3       The balance of equities tips in favor of Quinault as well. In making this determination the Court  
4 considers each party's claimed injury, as well as the effect that granting or denying Plaintiff's motion would  
5 have on the parties. *Winter*, 129 S.Ct. at 376. On one hand, denying the temporary restraining order  
6 would cost Quinault its \$480,000.00 deposit. Denial would also only minimally harm Defendants' as they  
7 already have another buyer for the land, in A&M, as well as Quinault's \$480,000.00 deposit. On the other  
8 hand, granting the temporary restraining order would maintain the status quo and, at least while the matter  
9 is pending, save Quinault's \$480,000.00 deposit. Granting the temporary restraining order would  
10 detriment Defendants in a very limited sense; namely, they would be prevented from using Quinault's  
11 deposit until the Court reaches a decision on the merits.

12       Finally, an injunction is in the best interests of the public. While the public has an interest in the  
13 continued availability of timber and timber derivative resources (the purpose for which A&M, a timber  
14 company, seeks the land in question), there are stronger public interests compelling the temporary  
15 restraining order. The public has an interest in maintaining the availability of its natural forests and  
16 protecting old growth trees from being exploited. However, and perhaps more importantly, the Quinault  
17 have a distinct interest in preventing the limited land assigned to their nation from falling into hands of non-  
18 Quinault owners<sup>12</sup>. This interest is reflected in Congress' recent enactment of stricter legislation to protect  
19 tribes like the Quinault. *See, e.g.*, 25 U.S.C. § 2216(f) (2004) (broadening the types of conveyances

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25       <sup>11</sup>In a January 23, 2009 letter to Quinault, the BIA stated that forfeiture of \$108,538.90 (10% deposit required for the  
26 six uncontested parcels) would occur regardless of the pending action before the Court [Dkt. #4-5]. The Court sees no reason to  
27 distinguish between the 20 contested parcels and the six uncontested parcels for purpose of deposit forfeiture. Quinault submitted  
a lump sum bid for all 26 parcels along with a deposit to cover all 26 parcels. Quinault alleges error in the BIA's judgment as  
it relates to all 26 parcels and as such the six uncontested parcels are indistinguishable for purposes of deposit forfeiture.

28       <sup>12</sup>Quinault provides a brief but useful summary of the problems in maintaining land for Native American tribes in their  
Motion for Temporary Restraining Order [Dkt. #9-2].

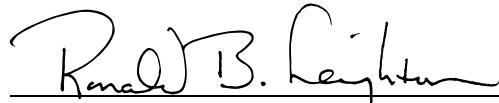
1 subject to the statutory tribal right to match competing bids during sales of Indian-owned land). The  
2 public's interest in preserving Native American land is hardly debatable and provides additional grounds for  
3 allowing a temporary restraining order in this matter. Moreover, the public's interest is not served by a  
4 forfeiture of Quinault's deposit, because Defendants currently have another buyer lined up, and there is no  
5 risk that they will be left unpaid. Allowing forfeiture of the deposit while awaiting the resolution of a good  
6 faith dispute does not serve the public's interest. For these reasons, the Court will grant Quinault's motion  
7 for a temporary restraining order, staying the forfeiture of Quinault's deposit and staying any sale of the 20  
8 contested parcels to A&M.

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10 Rule 65 allows the Court to require a bond upon issuing a temporary restraining order. Fed. R.  
11 Civ. P. 65. This bond may be used as a security to cover attorneys fees, costs and damages sustained by a  
12 party subject to the wrongful issuance of a temporary restraining order. Because the BIA has  
13 demonstrated that it may suffer some financial loss due to the Court's decision in granting Quinault's  
14 motion for a temporary restraining order. Plaintiff is hereby required to post a total bond of \$100,000.00 .  
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### 17 **III. Conclusion**

18 The facts of this case are sufficient to support a temporary restraining order. Because there is a  
19 substantial likelihood of irreparable harm, because the balance of equities tips heavily in Quinault's favor,  
20 and because granting the motion is in the public's interest, a temporary restraining order is proper.  
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22 IT IS SO ORDERED.

23 Dated this 18<sup>th</sup> day of March, 2009.  
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27 RONALD B. LEIGHTON  
28 UNITED STATES DISTRICT JUDGE